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8 EUROGENETC NORTH AMERICA, INC.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

TROLL BUSTERS LLC,

Plaintiff,

vs.

ROCHE DIAGNOSTICS GMBH, ROCHE
MOLECULAR SYSTEMS (RMS), ROCHE
DIAGNOSTICS CORP. D/B/A ROCHE
APPLIED SCIENCES, EUROGENETC NORTH
AMERICA INC., CLONTECH LABORATORIES
INC., INTEGRATED DNA TECHNOLOGIES
(IDT), LIFE TECHNOLOGIES CORP., QIAGEN
NV., THERMO FISHER SCIENTIFIC, INC.,
QUANTA BIOSCIENCES, INC., GENE LINK
INC., GENSCRIPT USA INC., EMD
CHEMICALS INC., TRILINK
BIOTECHNOLOGIES INC., and CEPHIED,

Defendants.

Case No. 11cv0056 IEG WVG

**DEFENDANT EUROGENETC NORTH
AMERICA, INC.'S RULE 5.1 NOTICE OF
CONSTITUTIONAL CHALLENGE**

Defendant Eurogentec North America, Inc. files this Notice regarding their constitutional challenge to 35 U.S.C. § 292 (the false marking statute), which is set forth in their motion to dismiss the First Amended Complaint, filed on May 6, 2011 in the above-captioned matter.

The question raised by Defendant’s constitutional challenge is whether 35 U.S.C. § 292 violates the Take Care Clause of Article II, § 3 of the United States Constitution by failing to include any of the procedural safeguards that have been held to preserve the constitutionality of other *qui tam* statutes like the False Claims Act, such as the right of the United States to be notified by the relator of a case before a defendant is served, the right to intervene, the right to seek dismissal or settlement of a false marking action over the objection of the relator, and the right to prevent dismissal of the action by the relator.

12 || Respectfully Submitted

MCKINNEY LAW GROUP APC

16 | Dated: May 6, 2011

By: _____ /s/ Jeffrey A. McKinney

Jeffrey A. McKinney

Attorney for Defendant
EUROGENTEC NORTH AMERICA, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on May 6, 2011 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

Respectfully Submitted,

MCKINNEY LAW GROUP APC

Dated: May 6, 2011

By: /s/ Jeffrey A. McKinney

Jeffrey A. McKinney

Attorney for Defendant
EUROGENTEC NORTH AMERICA, INC.

cc: Eric H. Holder, Jr.
Attorney General of the United States
DOJ Room B-103 – Service of Process
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